

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2003P01288WOUS
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ eFiled Signature _____ Typed or printed name _____	Application Number 10/575,297	Filed 04/11/2006
First Named Inventor Bernd Schessl et al.		
Art Unit 3781	Examiner Stephen J. Castellano	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- attorney or agent of record.
Registration number _____.
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 62,246

/Andre Pallapies/

Signature

Andre Pallapies

Typed or printed name

252-672-7927

Telephone number

August 18, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

<input type="checkbox"/>	*Total of _____ forms are submitted.
--------------------------	--------------------------------------

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**STATEMENT OF ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In the Final Rejection, claim 32 is rejected under 35 U.S.C. §112, first paragraph (enablement). In addition, claims 13-20 and 22-24 were rejected under 35 U.S.C. §102(b) over Smith (U.S. Patent No. 5,480,035). Further, claim 21 was rejected under 35 U.S.C. §103(a) over Smith. In addition, claims 13-22 and 31 were rejected under 35 U.S.C. §103(a) over Smith in view of Remmers (U.S. Patent No. 4,735,325) in view of Luukkonen (U.S. Patent No. 5,027,959). The Final Rejection includes the errors that follow.

Before addressing the Final Rejection, Applicants point out that on May 19, 2010 Applicants' representative conducted a telephonic interview with the Examiner to discuss this application. During the interview, the Examiner admitted that claim 13 was not anticipated in view of Smith. However, the Examiner took the position that claim 13 was obvious in view of the combination of Smith in view of Remmers and/or Luukkonen. The Examiner indicated that claim 1 would be allowable if amended to include the subject matter of dependent claims 23 or 24.

Applicants decided not to accept the Examiner's proposal. In the Final Rejection, however, the Examiner has again maintained the anticipation rejection of claim 13 over Smith. In addition, the Examiner has withdrawn any indication that claims 23 and 24 would be allowable if placed into independent form.

Unfortunately, it appears to Applicants that the Examiner has withdrawn the previous indication of allowability simply because Applicants did not choose to accept that subject matter at that time. In the next Office Action, if not a Notice of Allowance, the Examiner is requested to reinstate the indication of allowable subject matter with respect to dependent claims 23 and 24, and to withdraw the rejection based on Smith.

Turning now to the specific errors in the Office Action, the following is submitted:

Error #1 Smith does not teach or suggest holding element secured to a single side of the framework (claim 13).

Claim 13 is directed toward a crockery basket comprising, *inter alia*, a framework, at least one rack for engaging items to be washed to support the retention of said items relative to the framework and a plurality of holding elements. The holding elements are secured on the common edge of the framework along a single side of the framework.

Smith does not teach or disclose this subject matter. As shown in Smith's Figure 1, the holding elements 117 are required to be positioned on opposite sides of the framework

and in fact, could not work if they were secured on the common edge along a single side of the framework as set forth in claim 13.

Again, it is reiterated that the Examiner agreed that claim 13 distinguishes over Smith during a telephone conference on May 19, 2010. In addition, Applicants' recollection is that the Examiner agreed that claim 13 defines over Smith during an earlier telephone interview conducted on February 8, 2010.

Moreover, on page 5 of the Office Action, the Examiner states that "If it should be deemed that Smith fails to disclose that both holding elements are secured to a single side, then Smith can be modified by Remmers and Luukkonen". This appears to demonstrate the weakness in the Examiner's position.

Reconsideration and withdrawal of the rejection are respectfully requested.

Error #2 It would not have been obvious to have replaced the supports 22 of Smith with the supports/arms of Remmers or Luukkonen (claims 13 and 31).

In regard to independent claims 13 and 31, the Examiner's position is that it would have been obvious to replace the supports 22 of Smith with the supports 40 of Remmers so that the shelf can be supported on the side of the basket.

Applicants respectfully submit that this would be an inappropriate combination as there would be no support for the distal end of the Smith rack. In particular, element 57 of the Smith support 22 holds the rack in the horizontal position, whereas the Examiner's position is to replace Smith's support (and horizontal holding element 57) with the clips 40 of Remmers, which have no such horizontal support. In other words, the rack would simply pivot down, unless it was placed so close to the bottom of the basket that it would be supported by the basket bottom. However, in that case, there would be no room to place items in the existing space between the basket bottom and the bottom surface of the rack. The Examiner had no response to this argument during the May 19 interview, and does not include any clarifying explanation in the Office Action.

Reconsideration and withdrawal of the rejection are respectfully requested.

Error #3 Neither Remmers nor Luukkonen discloses a pair of vertical arms that straddle the vertical wire of the framework (claim 31).

The Examiner's position is that Remmers includes arms 50, 52 that straddle a vertical post, and that Luukkonen teach a similar arms that straddle vertical wires. However, claim 31 also specifies that the arms extend inside the framework and include hook-shaped

members. The arms of Remmers and Luukkonen do not extend inside the framework and outwardly extending arms 50 and 52 do not include the hook-shaped members.

Reconsideration and withdrawal of the rejection are respectfully requested.

Error #4 Claim 32 satisfies the enablement requirements of 35 U.S.C. §112, first paragraph.

Claim 32 recites that the holding element remains secured to the framework as the rack moves between different height positions of the holding element. According to the Examiner, the holding element 5 includes only one height position. However, Applicants respectfully submit that the Examiner's position is inappropriate since the holding element 5 as shown in Figure 1 in a general sense is capable of having multiple height positions.

Reconsideration and withdrawal of the rejection are respectfully requested.

For the reasons noted above, the Final Rejection should be withdrawn and the application passed to allowance.